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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/814,426	03/21/2001	Timothy S. DeBruine	1104-041	4082
27820 7590 02/02/2007 WITHROW & TERRANOVA, P.L.L.C. 100 REGENCY FOREST DRIVE SUITE 160 CARY, NC 27518			EXAMINER DIVECHA, KAMAL B	
			ART UNIT 2151	PAPER NUMBER
			MAIL DATE 02/02/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/814,426

Applicant(s)

DEBRUINE ET AL.

Examiner

KAMAL B. DIVECHA

Art Unit

2151

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 23 January 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: none.
Claim(s) objected to: none.
Claim(s) rejected: 1-47.
Claim(s) withdrawn from consideration: none.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.


JASON CARDONE
SUPERVISORY PATENT EXAMINER

Continuation of 11. does NOT place the application in condition for allowance because:

Applicant's arguments filed on January 23, 2007 have been fully considered but are not persuasive.

In response filed, applicant argues that Teodosiu's provisional applications ('658 and '659) and non-provisional application ('336) does not comply with 35 U.S.C. 112, first paragraph. In response, Examiner recognizes the disclosure of both of the applications as filed. Furthermore, applicant has not provided any sufficient evidence showing the non-compliance, rather than just alleging that the disclosure of '658 and '659 is different than the disclosure of '336.

As per the other arguments, they are considered not persuasive.

For example: the limitation "server determines that first and second nodes are part of the same private network" is clearly disclosed in '336 (See fig. 1 and fig. 4). On page 4, '336 discloses the process of locating the resources in correspondence with client IP address, and by utilizing the proximal technique in a peer-to-peer network communications. There is no reason why each peer node in the P2P network cannot be considered within the same private network.

When '336 utilizes the proximal criteria to return to the user a list of locations that are closest to the requesting peer, the server actually has determined that the second node which holds the resource is indeed in the same private network.

In addition to teachings above, '336 also discloses the process of determining whether the publisher, i.e. a peer node that holds the resource, is local to the RNS home server, which is located within the same network as the requesting peer node. The usage of term "local" in the art is clear, i.e. it refers to a node that is located within the same or private network (See fig. 1-4). As such, '336 clearly discloses the process wherein the server determines that the first node and the second node are part of the same private network, in this case, local and closer, to the requesting peer.

Applicant's arguments with respect to claims 6, 7, 8, 9, 11, 44, etc. are considered non persuasive.

For at least the reasons above, the rejection is maintained.



Kamal Divecha
Art Unit 2151
January 31, 2007.